IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Crl.MC.No. 5306 of 2003()

CC.331/2001 of JUDL.MAGISTRATE OF THE FIRST CLASS-I, ERNAKULAM

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PETITIONER: ACCUSED.

SHAJI NATESAN, S/O.NATESAN,
SHAJI NIVAS, MODUNGANOOR P.O.
TRIVANDRUM.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL
SRI.T.A.PRASANTH

RESPONDENTS: STATE COMPLAINANT.

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1. THE STATE OF KERALA, REP. BY THE
DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

2. M/S.MUTHOOT CAPITAL SERVICES LTD.,
MUTHOOT TOWERS, M.G.ROAD, KOCHI 15,
REP. BY AUTHORISED REP. T.N.BHUVANENDRAN, MUNDAKAL
HOUSE, UDAYAMPEROOR POST, TRIPUNITHURA.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.M.C.No.5306 of 2003-C

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Dated this the 8th day of October, 2007

O R D E R

The petitioner, who is the accused in C.C.No.331/2002 of the Judicial Magistrate of the First Class-I,Ernakulam, with respect to the offence under Section 138 of the Negotiable Instruments Act has sought for getting quashed the above proceedings.

2. Although notice was served, there was no representation for the second respondent.

3. As per Annexure-I complaint the complainant/second respondent has initiated the proceedings allegedly for the dishonour of the cheque for Rs.74,780/- said to have been issued towards the amounts due with respect to hire purchase transaction and as per the settlement of account. It is the case of the petitioner/accused that the blank cheque issued when the hire purchase transaction was entered into has been misused incorporating the amount. It is submitted that the vehicle has been repossessed and sold. He has also produced Annexure-III letter dated 26/12/2001 from the complainant mentioning that the vehicle has been repossessed and that if the same

is not to be sold, Rs.82,700/- is to be remitted within seven days. Annexure-V is the telegram, dated 17/05/2003, wherein it is directed that the balance amount of Rs.52,010/- has to be remitted within seven days for closing the account failing which the legal proceedings will be taken to attach the property. It is pointed out that the vehicle has been sold and hence, the balance amount claimed is Rs.52,010/-. The counsel has relied on the decision reported in **Sudha Beevi vs. State of Kerala [2004 (2) KLT 746]**, wherein this Court has held that after repossessing the vehicle and termination of the hire purchase agreement, offence under Section 138 will not be attracted with respect to the cheques issued prior to the date of termination of the hire purchase agreement.

In the circumstances and in view of the decision of Sudha Beevi (op.cit), the proceedings pending as C.C.No.331/2002 in the file of the Judicial Magistrate of the First Class-I, Ernakulam, is herewith set aside.

The criminal miscellaneous case is allowed.

K.R.UDAYABHANU,
Judge

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